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JEANETTE H. NO. CLERK

BY: BOBBI JO BALL

9
10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

V1300CR201080049

13 Plaintiff,

**STATE'S MOTION TO VACATE ORAL
ARGUMENT RE: PENDING RULE 404(B)
MOTION**

14 vs.

15 JAMES ARTHUR RAY,

Division PTB

16 Defendant.

17 Comes now the State of Arizona, by and through Sheila Polk, Yavapai County Attorney,
18 and hereby requests this Court vacate the oral argument on the pending Rule 404(b) motion oral
19 argument on this motion set for December 21, 2010, and issue a ruling based on the evidentiary
20 hearing and pleadings filed on the issue. This request is further supported by the following
21 Memorandum of Points and Authorities.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **A trial court has the discretion to limit or deny oral argument.**

24 Rule 35.2, Ariz. R. Crim. P., gives the court the discretion to limit or deny oral argument
25 on any issue. The comment to the Rule indicates its intent is to "give the court maximum
26 discretion in deciding what procedures, in addition to the written motion and memoranda, will be

1 most helpful to it in reaching a reasoned and expeditious decision on each issue.” In addition, the
2 Rule “eliminates either party’s absolute right to oral argument on a motion.” *Comment to Rule*
3 *35.2, Ariz. R. Crim. P.*

4 This Court presided over a three day evidentiary hearing on this issue during which both
5 parties presented argument on this issues interspersed with the presentation of the evidence. In
6 addition, both parties have filed detailed briefs setting forth their arguments. At this point any
7 argument presented would not only be repetitive and cumulative, but will also significantly delay
8 this Court’s ruling on an issue that is critical for trial preparation.
9

10 Oral argument on the Rule 404b acts is scheduled for December 21, 2010. It is
11 anticipated this Court will need additional time to prepare its ruling following oral argument. In
12 preparation for trial, the State is currently identifying out-of-state witnesses who need be served
13 with subpoenas in order to ensure their appearance at trial. The process of preparing and serving
14 subpoenas in other states is time consuming and requires extensive coordination between other
15 law enforcement agencies and prosecutors’ offices. In addition, the State will need to begin
16 making travel arrangements for its witnesses. Without a definitive ruling on the issue, the State is
17 unable to identify what witnesses will need be called in order to move forward with the
18 necessary preparations.
19

20 In light of the time constraints involved and the fact that this Court has already heard
21 testimony and argument in addition to extensive briefings on this issue, the State hereby requests
22 this Court to vacate the oral argument on the pending Rule 404(b) motion and issue a ruling
23 based on the evidentiary hearing and the pleadings.
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3 RESPECTFULLY submitted this 3rd day of December, 2010.

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5 By Sheila Sullivan Polk
6 SHEILA SULLIVAN POLK
7 YAVAPAI COUNTY ATTORNEY

8
9 **COPIES** of the foregoing emailed/delivered this
10 3rd day of December, 2010:

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